

01129/58503-MDC

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY _____ D.C.

05 JUN 17 PM 4:40

ROBERT R. DI TROLIO
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W. D. OF TN JACKSON

LARRY STEVE MELTON, LARRY S. MELTON,
and R & J OF TENNESSEE, INC.,

Plaintiffs,

vs.

No.: 1-02-1152 B
JURY DEMANDED

BANK OF LEXINGTON branch of BANK OF FRIENDSHIP,
TERESA HARRIS, B & H INVESTMENTS, INC., BENNIE
FESMIRE, DIANE TUCKER, HAROLD WALDEN
BLANKENSHIP, DEAN BLANKENSHIP, FRANKIE
STANFILL, KEVIN CARTER, The law firm of MILAM,
CARTER & STANFILL, REGINA MILLER, TODD
HENDERSON, WILLIAM WILHITE, DAVID RIDDICK,
The law firm of HOLMES, RICH, SIGLER & RIDDICK,
DON WEBSTER, JIMMY BARBOUR, WALDON GWINN,
JAMES PUTNAM, TIM PILKINGTON, JAMES E. SMITH,
M. V. WILLIAMS, JR., INVESTMENT MANAGEMENT
FINANCE, INC., and JOHN DOES I, II, III and IV,

Defendants.

HAROLD WALDEN BLANKENSHIP,

Defendant/Third Party Plaintiff,

vs.

JOHN MELTON, HOWARD DOUGLASS, AMERICAN
HOME FINANCIAL SERVICES, INC., AMERICAN
HOME FINANCIAL SERVICES II, INC., BLANKENSHIP/
MELTON AVIATION, INC., LARRY STEVE MELTON,
LARRY S. MELTON, R & J OF TENNESSEE, INC.,
BANK OF LEXINGTON, BRANCH OF FRIENDSHIP,

Third Party Defendants.

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LARRY S. MELTON,)
)
Plaintiff/Third Party Defendant/)
Third Party Plaintiff,)
)
vs.)
)
BRADLEY KIRK, CARTER, STANFILL & KIRK, PLLC,)
DANIEL PERKY, SHIRLEY BLANKENSHIP, KELLY W.)
BLANKENSHIP, BLANKENSHIP CONSTRUCTION, LLC.,)
BLANKENSHIP/MELTON REAL ESTATE, INC., BETH)
MALOAN, JENNIFER AZBILL, JACK HOLMES, PAUL)
PRIDDY, MICKEY GRANGER, DENNIS HUBBARD,)
K.C. ARNETT, RICHARD McCORMICK, BLANKENSHIP)
BROTHERS' CONSTRUCTION COMPANY, CITY OF)
LEXINGTON, KEVIN CARTER, FRANKIE STANFILL,)
HAROLD WALDEN BLANKENSHIP, DEAN)
BLANKENSHIP, REGINA MILLER, WILLIAM WILHITE,)
DAVID RIDDICK, JIMMY BARBOUR, WALDON GWINN,)
JAMES PUTNAM, TIM PILKINGTON, JAMES E. SMITH,)
M. V. WILLIAMS, JR., BANK OF LEXINGTON, Branch of)
BANK OF FRIENDSHIP, B & H INVESTMENTS, INC.,)
BENNIE FESMIRE, DIANE TUCKER, and JOHN DOE I,)
)
Third Party Defendants.)

**ORDER DISMISSING THE COUNTER CLAIMS/CROSS-CLAIMS COMPLAINT
OF LARRY S. MELTON**

This matter came before this Court on May 27, 2005, upon Plaintiff/Third-Party Defendant/Third-Party Plaintiff Larry S. Melton's counterclaims and cross-claims against Defendants and Third-Party Defendants, James E. Smith, William Wilhite, Diane Tucker, Regina Miller, Todd Henderson, Don Webster, Jimmy Barbour, Waldon Gwinn, James Putnam, Tim Pilkington, M.V. Williams, Jr., City of Lexington, Frankie Stanfill, Kevin Carter, David Riddick, the law firm of Holmes, Rich, Sigler & Riddick, B & H Investments, Inc., and

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Bennie Fesmire, and the responses of said Defendants and Third-Party Defendants to Plaintiff/Third-Party Plaintiff's counterclaims and cross-claims.

Federal Rule of Civil Procedure 14 governs third-party practice. Rule 14(a) allows for a defending party, as a third-party plaintiff to bring in "a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff." Fed. R. Civ. P. 14(a). Rule 14(b) further allows a plaintiff, upon a counterclaim being asserted against him, to bring in a third party "under circumstances which under this rule would entitle a defendant to do so." Fed. R. Civ. P. 14(b). The Court finds that Larry S. Melton's further counterclaims and cross-claims were asserted against individuals and entities who are the original Defendants in this case and thus, who are already parties to this lawsuit. Rule 14(a) therefore does not allow for third-party claims to be brought against these individuals and entities. Because the Defendants would not be allowed to bring third-party claims against these persons, the Plaintiff/Counter-Defendant also is not allowed to bring such additional claims under Rule 14(b).

Federal Rule of Civil Procedure 15 governs amendments to pleadings and allows for such under a strict time table:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served.

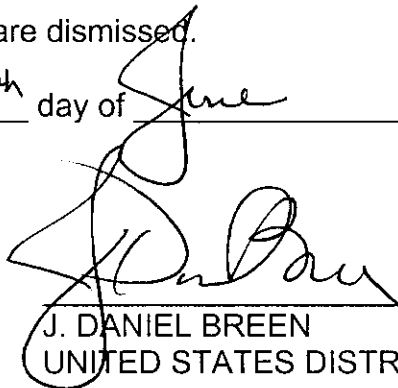
Fed. R. Civ. P. 15(a). A party may otherwise amend his pleading only by leave of court or by written consent of the adverse party. Id. Local Rule of Court for the Western District of Tennessee 7.2 further prescribes certain conditions for filing motions in this Court, including

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the requirement of a certificate that the movant has consulted with counsel and that the parties are either able or unable to reach agreement as to the issues or the action requested by the motion. L.R. 7.2(a)(1)(B). The Court finds that Plaintiff/Counter-Defendant Larry S. Melton, in filing his further counterclaims and cross-claims against the original Defendants, has not met the requirements of either Rule 15 or the Local Rules of this Court.

It is therefore ORDERED that Plaintiff Larry S. Melton's further counterclaims and cross-claims against the Defendants are dismissed.

IT IS SO ORDERED this 17th day of June, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

RAINEY, KIZER, REVIERE & BELL, PLC

By: 

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this pleading or document was served upon counsel for each of the parties by mailing postage prepaid or by delivery to the person or office of such counsel.

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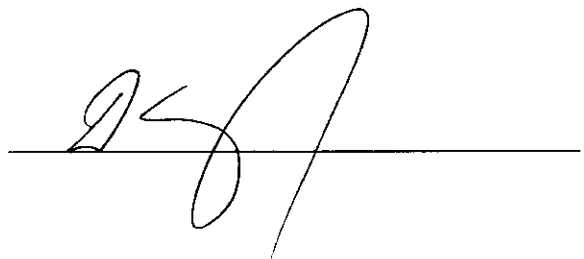
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This the 13th day of June, 2005.





Notice of Distribution

This notice confirms a copy of the document docketed as number 600 in case 1:02-CV-01152 was distributed by fax, mail, or direct printing on June 20, 2005 to the parties listed.

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